IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 248 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAMADBIN MOHMAD OLGI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 248 of 2001

M/S THAKKAR ASSOC. for Petitioner No. 1

MR HL JANI ASSTT GOVT PLEADER for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2001

ORAL JUDGEMENT

#. Heard Mr.Deepak Thakkar, learned advocate appearing for M/s Thakkar Associates on behalf of the petitioner and Mr.H.L.Jani, learned AGP for respondent Nos.1 to 3

State and Ms.P.J.Dawawala, learned Additional Standing Counsel for the Central Government appearing for respondent No.4. In the present petitioner, order of detention dated 20th December, 2000 has been challenged by the petitioner which has been passed by the District Magistrate, Junagadh District. The respondent - State has filed the affidavit-in-reply on behalf of the respondent through one Deputy Secretary namely Mr.P.J.Vyas to the Government of Gujarat, Food, Civil Supply and Consumer Affairs Department dated 14th February, 2001 and the respondent No.4 has also filed affidavit-in-reply through Shri S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi dated 28th February, 2001 and both are taken on record.

#. Learned advocate Mr.Deepak Thakkar has submitted that though various contentions have been raised by the petitioner challenging the detention order but one contention is enough to vitiate the order of detention. He submitted that detaining authority has considered earlier order of detention which has been passed against the present petitioner on 29th July, 1997 by the District Magistrate, Junagadh. This earlier detention has been considered by the detaining authority and found that the petitioner was habituated to commit breach of provisions of PBM Act. Therefore, learned advocate Mr.Thakkar has submitted that the petitioner has raised specific contention in ground - [P] at page-11 that earlier detention if it is taken into account then the order of detention which is not passed on fresh ground is required to be set aside. He relied upon a decision of this Court in case of SALIMKHAN ALIAS CHHOTE ZABBAR HANIFKHAN PATHAN VS STATE OF GUJARAT AND ORS. reported 2000 [2] GLH 184.

#. Learned advocate Mr.H.L.Jani appearing on behalf of the respondent - State has submitted that the detaining authority no doubt referred the earlier detention order dated 29th July, 1997 but the same has not been considered while passing the detention order as ground of detention and the present detention order is passed on fresh ground and therefore, according to the learned AGP, the decision which has been relied upon by the learned advocate appearing on behalf of the petitioner is not applicable to the facts of the present case.

#. Learned Advocate Ms.P.J.Dawawala has supported the detention order and she submitted that the detaining authority has considered all the material which are on record and thereafter the detaining authority has passed

the detention order which is legal and valid which does not require any interference of this Court.

#. I have considered submissions of all the learned advocates. However, on perusal of the record of the present case, fact remains that after perusing the grounds of detention, on page-23 para-9, in the grounds of detention, the detaining authority in terms referred the earlier detention dated 29th July, 1997 and came to the conclusion that the petitioner is habituated person committing such illegal activities which violated provisions of PBM Act. Learned advocate Mr.Deepak Thakkar has made a clear statement before this Court that earlier detention order dated 29th July, 1997 has been set aside by this Court and this fact has been narrated by the petitioner on page-33 in his statement dated 14th December, 2000. Therefore, according to my opinion, the detaining authority has not merely referred earlier detention order but this detention order is based on earlier detention because there is clear finding of the detaining authority to the effect while taking into account the earlier detention that the petitioner is a habituated person committing such illegal activities violated relevant provisions of PBM Act and therefore, submission of the learned AGP Mr.H.L.Jani is not correct to impress upon this Court that the detaining authority has merely referred to earlier detention order. According to my opinion, he has not merely referred but he has in fact applied its mind and relied on earlier detention and considered the same while passing the present impugned order of detention. Therefore, in light of this fact, observations made by this Court in case of SALIMKHAN @ CHOOTE JABBAR HANIFKHAN PATHAN reported in 2000 [2] GLH 184 wherein, this Court has considered that once the earlier order of detention is set aside by the High Court, same could not have been referred to by detaining authority while passing subsequent order of detention. It becomes an irrelevant ground and accordingly the order of detention quashed. The relevant observations of the aforesaid decision in para-15 are as under :-

"15. In that case, the question before the Court was whether the authority which has applied its mind to the various cases earlier was required to furnish the copies of the documents in relation to this. This Court held reference to this matter and drawing attention of the detenu to those cases indicated that the authority had taken into consideration those cases and, therefore, it was necessary to supply

> copies of those cases to the detenu. Adopting the same principle here, the detaining authority had applied its mind to an order of detention which was passed in 1996 and subsequently, quashed by an order of the High Court, as stated above. This factor, therefore, became irrelevant, as has been held by the Apex Court. The Apex Court in para-12 of the decision in case of Chhagan B. Kahar [Supra], after discussing the various decisions, held that, "A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even alongwith the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule, it nullifies the entire order." The detention order of 1996, therefore, having been quashed and set aside by the High Court, was nullified and it could not have been referred to by the detaining authority while passing the order, for the reason that, although it has categorically stated that it was at the back of the mind of the detaining authority and may be unwittingly the authority has permitted itself into relying on this irrelevant ground. The detaining authority, by merely stating that reference to the detention order of 1996 is not considered while passing the order, expects court to believe that it has not permitted active portion of its mind to consider the material which was stored in dissection of human mind into such compartment is not possible to be accepted. In this view of the matter, the order gets vitiated on this ground also."

#. In light of above discussion and considering the observations made in para-15 so also taking into account the grounds of detention as made in para-5, according to my opinion, the order of detention is required to be quashed and set aside. In the result, order of detention dated 20th December, 2000 is hereby quashed and set aside. In the result, present petition is allowed. The petitioner - detenu - SAMADBIN MOHMAD OLGI is ordered to be set at liberty forthwith if he is not required for any other case. Rule is made absolute. No order as to costs.

Date : 16-6-2001 [H.K.Rathod, J.]

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